

# November 2003

## Update: Criminal Procedure Monograph 2—Issuance of Search Warrants (Revised Edition)

### Part A — Commentary

#### 2.2 Initiating the Search Warrant Process

##### D. Authority to Issue Search Warrants

###### 1. District Court Magistrates

Insert the following language on page 4 immediately before subsection 2:

Effective October 17, 2003, 2003 PA 185 authorizes “[a] judge *or a district court magistrate* [to] issue a written search warrant in person or by any electronic or electromagnetic means of communication, *including by facsimile or over a computer network.*” MCL 780.651(3) (emphasis added).

## 2.15 Issuance of Search Warrant in OUIL Cases

At the top of page 31, delete the first paragraph and the **Note** immediately following it. Effective October 17, 2003, 2003 PA 185 eliminated MCL 780.651(3)'s former reference to the electronic transmission of a court order issued as a search warrant under MCL 257.625a. MCL 780.651(3), as amended, states:

“A judge or district court magistrate may issue a written search warrant in person or by any electronic or electromagnetic means of communication, including by facsimile or over a computer network.”

## 2.16 Submission of Affidavit and Issuance of Search Warrant by Electronic Device

Replace all but the last paragraph in Section 2.16 on pages 32 and 33 with the following:

Effective October 17, 2003, 2003 PA 185 expanded the electronic or electromagnetic means by which affidavits and search warrants could be signed and transmitted to include transmission by facsimile and over a computer network. MCL 780.651(2) provides:

“An affidavit for a search warrant may be made by any electronic or electromagnetic means of communication, including by facsimile or over a computer network, if both of the following occur:

“(a) The judge or district court magistrate orally administers the oath or affirmation to an applicant for a search warrant who submits an affidavit under this subsection.

“(b) The affiant signs the affidavit. Proof that the affiant has signed the affidavit may consist of an electronically or electromagnetically transmitted facsimile of the signed affidavit or an electronic signature on an affidavit transmitted over a computer network.”

An oath or affirmation orally administered by electronic or electromagnetic means is considered to be administered before the judge or district court magistrate. MCL 780.651(5).

In addition to issuing search warrants in person, MCL 780.651(3) authorizes a judge or district court magistrate to issue a written search warrant by any electronic or electromagnetic means including transmission by facsimile or over a computer network.

Whenever search warrants are electronically or electromagnetically issued, the peace officer or department in receipt of the warrant must receive proof that the issuing judge or district court magistrate signed the warrant before its execution. MCL 780.651(4). An electronically or electromagnetically transmitted facsimile of the signed warrant or an electronic signature on a warrant transmitted over a computer network may serve as proof of the judge's or magistrate's signature. *Id.*

If electronic or electromagnetic means are used to submit an affidavit for a search warrant or to issue a search warrant, the transmitted copies of the affidavit or search warrant are duplicate originals and need not contain an impression made by an impression seal. MCL 780.651(6).